Nev-Tun, Inc. d/b/a Schulman Meats and its alter egos Nick and Sharon Tunzi *and* United Food and Commercial Workers Union, Local 711, AFL–CIO . Cases 28–CA–10895, 28–CA–10952, and 28–CA–11441

January 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon charges and an amended charge filed by United Food and Commercial Workers Union, Local 711, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint against Nev-Tun, Inc. d/b/a Schulman Meats and its alter egos Nick and Sharon Tunzi (respectively, Respondent Schulman, Respondent Tunzi, or collectively, the Respondent) alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges, amended charge and amended consolidated complaint, the Respondent has failed to file an answer.

On December 14, 1992, the General Counsel filed a Motion for Summary Judgment. On December 16, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended consolidated complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the amended consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 4, 1992, notified the Respondent that unless an answer was received by November 11, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Schulman, a Nevada corporation, with an office and place of business in Las Vegas, Nevada, was engaged in wholesale and retail sales of meat provisions. During the 12-month period ending May 3, 1991, Respondent Schulman purchased and received goods and products valued in excess of $50,000 directly from points located outside the State of Nevada. During the 12-month period ending May 3, 1991, Respondent Schulman derived gross revenues in excess of $500,000.

The Tunzis own all or substantially all of the outstanding stock in Respondent Schulman and have served as the principal officers and otherwise personally directed the labor management affairs of Respondent Schulman. Respondent Tunzi has personally guaranteed the purchase and/or lease of equipment and property for Respondent Schulman; has personally indemnified the previous owner of Respondent Schulman from potential liability; has commingled its personal assets with those of Respondent Schulman by, inter alia, causing Respondent Schulman to make payments toward the purchase or lease of real and personal property owned by Respondent Tunzi as husband and wife; and has otherwise so integrated or intermingled its assets and affairs that no distinct corporate lines have been maintained.

We find that Respondent Schulman and Respondent Tunzi are alter egos and a single employer within the meaning of the Act. We find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about November 11, 1991, the Respondent told an employee that the reason it had closed the plant was because of the Union.

Since on or about November 8, 1991, the Respondent has failed to grant vacation pay to employees who were members of the Union because these employees supported or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in these activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent employed in the classifications set forth in Article VIII of the col-

lective-bargaining agreement for the period April 4, 1988, to December 1, 1990.

Since on or about at least April 4, 1988, the Union has been the lawfully designated exclusive collective-bargaining representative of the employees in the unit and since that date has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements between the Respondent and the Union, the most recent of which was effective by its terms for the period April 4, 1988, to December 1, 1990. On or about December 14, 1990, the Respondent and the Union agreed to extend all terms and conditions of the 1988–1990 agreement indefinitely. At all times since at least April 4, 1988, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the employees in the unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Beginning in or about January 1991, the Respondent has failed to make contractually required contributions to the health and welfare fund and the pension funds.

At all times since on or about June 5, 1991, the Respondent has failed to meet or bargain with the Union over a successor collective-bargaining agreement to the 1988–1990 agreement.

At all times since on or about June 5, 1991, the Respondent has failed to honor the terms and conditions set forth in the 1988–1990 agreement.

On or about June 7, 1991, the Respondent bypassed the Union and dealt directly with its employees in the unit by bargaining with them concerning their wages, hours, and other terms and conditions of employment.

On or about June 11, 1991, the Respondent caused the termination of its employee Frank Tegano because he refused to accept the Respondent's changes in his wages, hours, and working conditions from those set forth in the 1988–1990 agreement.

On or about June 17, 1991, the Respondent changed the seniority provisions of the 1988–1990 agreement and, pursuant to these changes, discharged its employee Dean Felthauser without regard to the seniority provisions of the 1988–1990 agreement.

The Respondent unilaterally failed to make contractually required contributions to the health and welfare fund and the pension funds; unilaterally failed to honor the terms and conditions of the 1988–1990 agreement; and unilaterally changed the seniority provisions of the 1988–1990 agreement. These actions were taken without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the employees in the unit with respect to these acts and the effects of these acts. These acts involve subjects which are mandatory for purposes of bargaining.

On or about April 15, 1991, the Respondent advised the Union in the context of ongoing negotiations with the Union that the Respondent was losing money and was contemplating closing its business. By letter dated April 17, 1991, the Union requested that the Respondent furnish it with the Respondent's financial records, including the latest tax forms for Nick Tunzi personally and all of his businesses which derived any revenue from its Nevada operations. This information was requested in order to substantiate the Respondent's claim that it was losing money. This information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit. The Respondent has failed since on or about April 17, 1991, to furnish the Union with the requested information.

On or about November 3, 1991, the Respondent announced to its employees and notified union officials that it was closing the Respondent's facility and leasing the facility to Adaven, Inc. On or about November 8, 1992, the Union and the Respondent met to bargain over the effects of the Respondent's plant closure. During the course of this bargaining meeting, the Union requested that the Respondent furnish it with payroll records. This information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the unit. Since on or about November 8, 1991, the Respondent has failed and refused to furnish the Union with the requested information.

On or about September 27, 1991, and September 30, 1991, respectively, the Respondent and the Union, executed and entered into a settlement agreement in Cases 28–CA–10895 and 28–CA–10952, which was approved by the Regional Director for Region 28 on November 2, 1992. By order dated June 4, 1992, the Regional Director for Region 28 vacated the settlement agreement because the Respondent failed to abide by the terms of the agreement.

CONCLUSIONS OF LAW

1. By telling an employee that the reason it closed the plant was because of the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By failing and refusing to grant vacation pay to employees who were members of the Union because the employees joined, supported, or assisted the Union, or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to discourage these activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By failing and refusing to make contributions to the health and welfare fund and the pension funds; failing to meet or bargain with the Union over a successor collective-bargaining agreement; failing to honor the terms and conditions of its collective-bargaining agreement; bypassing the Union and dealing directly with employees in the unit regarding their wages, hours, and other terms and conditions of employment; causing the termination of its employee Frank Tegano because he refused to accept the Respondent's changes in his wages, hours, and working conditions; and changing the seniority provisions of its agreement and pursuant to these changes terminating its employee Dean Felthauser; and by failing to furnish the Union with relevant and necessary information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily failed to grant vacation pay to its employees who were members of the Union, we shall order the Respondent to make them whole for this loss of earnings as a result of the discrimination against them, with backpay calculated as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that the Respondent unlawfully caused the termination of its employee Frank Tegano, and unlawfully discharged its employee Dean Felthauser, we shall order the Respondent to make these employees whole for any loss of earnings as a result of the discrimination against them, with backpay to be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, supra.

Moreover, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to make contractually required payments to the health and welfare fund and the pension funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra.

Further, having found that the Respondent has failed to honor the terms of its 1988–1990 collective-bargaining agreement, we shall order the Respondent to make the unit employees whole by making all contractually required wage and benefit payments which have not been paid and that would have been paid absent the Respondent's unilateral refusal to honor the terms of the collective-bargaining agreement. We shall also order the Respondent to reimburse the unit employees for any expenses they incurred because of its failure to make the required payments, as set forth in *Kraft Plumbing*, supra, with interest as prescribed in *New Horizons*, supra.

Finally, having found that the Respondent has failed to furnish the Union with relevant and necessary information, we shall order the Respondent to furnish the information to the Union on request. Because the Respondent may have ceased its operations, we shall also order that the attached notice be mailed to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Nev-Tun, Inc. d/b/a Schulman Meats and its alter egos Nick and Sharon Tunzi, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employees that the reason it closed its plant was because of the Union.

(b) Failing to grant vacation pay to its employees because they were members of the Union.

(c) Failing to make contractually required contributions to the health and welfare fund and the pension funds; failing to meet or bargain with the Union over a successor collective-bargaining agreement; failing to honor the terms of its 1988–1990 agreement; bypassing the Union and dealing directly with its employees concerning wages, hours, and other terms and conditions of employment; causing the termination of its employee Frank Tegano because he refused to accept the unilateral changes in wages, hours, and working conditions; and changing seniority provisions and pursuant to these changes discharging its employee Dean Felthauser without regard to contractual seniority provisions.

(d) Failing to provide the Union with necessary and relevant information.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make its employees whole, with interest, for losses suffered as a result of failure to grant vacation pay; failure to make contributions to the health and welfare fund and the pension funds; failure to honor the terms of its collective-bargaining agreement; bypassing the Union and dealing directly with employees and causing the discharge of its employee Frank Tegano; changing seniority provisions of the collective-bargaining agreement and causing the discharge of its employee Dean Felthauser; all in the manner set forth in the remedy section of this decision.

(b) Honor the terms and conditions of the collective-bargaining agreement with the Union, including the wage and benefit provisions.

(c) On request, provide the Union with the information it requested on or about April 17 and November 8, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Las Vegas, Nevada, and mail to its unit employees, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees that the reason we closed our facility is because of the employees activities on behalf of United Food and Commercial Workers Union, Local 711, AFL–CIO.

WE WILL NOT fail to grant members of the Union their contractually required vacation pay.

WE WILL NOT fail to make contractually required contributions to the health and welfare fund and the pension funds; fail to meet or bargain with the Union over a successor collective-bargaining agreement; fail to honor the terms and conditions of employment set forth in our contract with the Union; bypass the Union and deal directly with employees regarding their wages, hours, and other terms and conditions of employment; cause the termination of our employee Frank Tegano because he refused to accept our unilateral changes in wages, hours, and working conditions; or change seniority provisions of the agreement and discharge our employee Dean Felthauser without regard to contractual seniority.

WE WILL NOT refuse to provide the Union with necessary and relevant information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our employees whole with interest for our failure to grant vacation pay.

WE WILL make our employees whole with interest for our failure to make contributions to the health and welfare fund and the pension funds; our failure to honor the terms and conditions of our collective-bargaining agreement; our bypassing the Union and dealing directly with employees; our causing the termination of Frank Tegano; and our failure to honor the seniority provisions of our collective-bargaining agreement and our discharge of Dean Felthauser without regard to seniority provisions of the collective-bargaining agreement.

WE WILL honor the terms and conditions of the collective-bargaining agreement with the Union, including the wage and benefit provisions.

WE WILL bargain in good faith with the Union, the exclusive bargaining representative of all our employees in the classifications set forth in article VIII of the collective-bargaining agreement for the period April 4, 1988, to December 1, 1990.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL, on request, provide the Union with the information it requested on April 17 and November 8, 1991.

NEV-TUN, INC. D/B/A SCHULMAN MEATS AND ITS ALTER EGOS NICK AND SHARON TUNZI